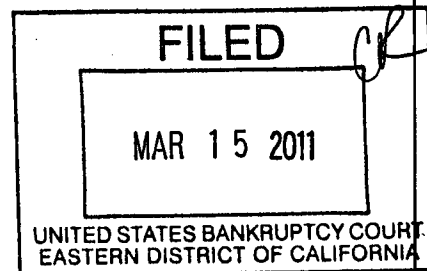


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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 10-63324-A-7

JOSEPH PERRY and
ROBIN L. PERRY,

Debtor.

**ORDER TO SHOW CAUSE DIRECTED TO RANDY J. RISNER
ORDERING HIM TO APPEAR AND SHOW CAUSE WHY HE SHOULD NOT BE
SANCTIONED AND/OR ORDERED TO DISGORGE FEES FOR
MISREPRESENTATION TO THE COURT WITH RESPECT
TO REQUEST TO PAY FILING FEE IN INSTALLMENTS**

Randy J. Risner is hereby ordered to appear and show cause why he should not be sanctioned for misrepresentations made to the court in connection with a motion in this case to pay the filing fee in installments. The case was filed on November 17, 2010. Also on November 17, 2010, the debtors filed an application to pay the filing fee in installments. That application represents that the debtors are "unable to pay the filing fee except in installments." The application was signed, electronically, by Randy J. Risner and by each of the debtors. On November 18, 2010, the court routinely granted the order allowing the filing fee to be paid in installments.

On March 1, 2011, the court issued a Notice of Intent to Close Chapter 7 Case Without Entry of Discharge Due to Failure to Pay Filing Fee and Administrative Fee. That Notice of Intent

1 indicated that the date for making the final installment payment
2 in the case had passed and that \$224 of the fee had not been
3 paid.

4 On March 4, 2011, the court received a final installment
5 payment.

6 Prior to that time, on March 1, 2011, the court held a
7 hearing on whether a reaffirmation agreement between the debtors
8 and Toyota Motor Credit Corporation should be approved. At that
9 hearing, the debtors appeared without their attorney. At the
10 hearing, the court brought up that a significant amount of the
11 filing fee had not been paid. Mr. and Mrs. Perry stated, and
12 Mrs. Perry testified, that they paid Randy J. Risner \$1,000
13 before the bankruptcy case was filed. She further testified that
14 that amount included \$299 for the filing fee. Thus, they paid
15 him \$701 for his attorney fee and \$299 for the filing fee.

16 The Disclosure of Compensation filed by Randy J. Risner
17 states that he was paid \$975 before the case was filed.
18 According to the Perrys, that disclosure is wrong.

19 Mrs. Perry also testified that she was aware that Risner
20 filed an application to pay the filing fee in installments.
21 According to her, Randy J. Risner

22 "called us in his office shortly before he got us a court
23 date for our bankruptcy, and proceeded to tell us that he
did not have the money to file our case."

24 The Perrys did authorize Randy J. Risner to file the
25 application to pay the filing fee in installments. However, the
26 filing of the application to pay the filing fee in installments
27 was a misrepresentation in that the debtors clearly had the
28 ability to pay the fee to the court as they had, in fact, already

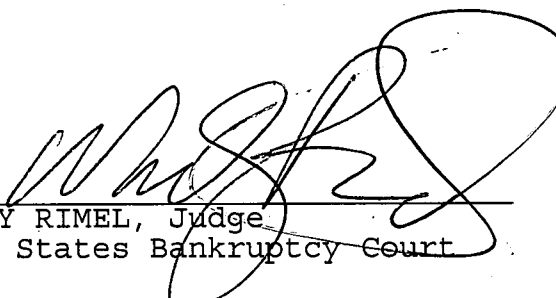
1 paid it to Randy J. Risner.

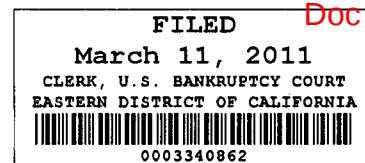
2 For an attorney representing debtors in chapter 7 to accept
3 from the debtors funds to pay the filing fee in full and then
4 cause the debtor to file an application to pay the fee in
5 installments is tantamount to a fraud on the court.
6 Additionally, the harm was increased in this case because Randy
7 J. Risner failed to timely pay the installments, thus putting the
8 debtors at risk of having their discharge delayed or the case
9 closed without a discharge being entered. It was not until after
10 the hearing on the reaffirmation agreement when the court raised
11 the issue that Randy J. Risner made the final payment in this
12 case and the debtors were able to obtain their discharge.

13 A hearing on this Order to Show Cause will be held April 6,
14 2011, at 9:00 a.m. in Department A, Courtroom 11, Fifth Floor,
15 2500 Tulare Street, Fresno, California 93721.

16 At that time, Randy J. Risner shall appear personally and show
17 cause why he should not be sanctioned. A true and correct copy
18 of the transcript of the hearing on approval of reaffirmation
19 agreement with Toyota Motor Credit Corporation is attached hereto
20 to as Exhibit "A" and incorporated herein as though fully set
21 forth.

22 DATED: March 15, 2011.

23
24 
25 WHITNEY RIMEL, Judge
26 United States Bankruptcy Court
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1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA
3 HON. WHITNEY RIMEL, JUDGE
4

5 In the Matter of) Case No. 10-63324-A-7
6 JOSEPH PERRY, JR.,) Chapter 7
7 and ROBIN PERRY,)
8 Debtors.)
9) Hearing on Approval of
10) Reaffirmation Agreement
11) with Toyota Motor
12) Credit Corp.

13 March 1, 2011 Fresno, California
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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
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21 Linda A. Gorman, RMR
22 C.S.R. License #12693
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Exhibit "A"

1 APPEARANCES OF COUNSEL:

2 For the Debtors: Joseph and Robin Perry
In pro per

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1 Tuesday, March 1, 2011 Fresno, California

2 2:00 p.m. Calendar

3 THE COURT: Joseph and Robin Perry. You're Mr. and
4 Mrs. Perry?

5 DEBTOR JOSEPH PERRY: Yes.

6 DEBTOR ROBIN PERRY: That's correct.

7 THE COURT: So you have a filing fee that hasn't been
8 paid. Are you aware of that?

9 DEBTOR ROBIN PERRY: No.

10 THE COURT: Mr. Risner represents you in your
11 bankruptcy case; is that right?

12 DEBTOR ROBIN PERRY: That's correct.

13 THE COURT: Did you pay -- give him the money to pay
14 the filing fee?

15 DEBTOR ROBIN PERRY: Yes, he was paid upfront.

16 THE COURT: Now, did you pay Mr. Risner the entire
17 amount of the filing fee before you filed your case?

18 DEBTOR ROBIN PERRY: Yes.

19 THE COURT: Okay. And you're Mr. and Mrs. Perry?

20 DEBTOR ROBIN PERRY: That's correct.

21 THE COURT: And how much did you pay Mr. Risner to
22 file your case for you? Not the filing fee, but the total
23 amount you paid him.

24 DEBTOR ROBIN PERRY: We paid him a thousand dollars.

25 THE COURT: Okay. And then -- plus the filing fee,

1 right?

2 DEBTOR ROBIN PERRY: That included --

3 DEBTOR JOSEPH PERRY: That included the filing fee.

4 It was seven hundred dollars, plus the two ninety-nine for the
5 filing fee.

6 THE COURT: Okay. Alright.

7 So then what he did was he filed an application to pay
8 the filing fee in installments, even though he already had the
9 money. And I'm not seeing the -- I'm told that there is an OSC
10 for failure to pay the remaining filing fee. I'm not seeing it
11 here. If I were to -- yeah, it looks like you paid him nine
12 hundred and seventy-five dollars. Does that ring a bell?

13 DEBTOR ROBIN PERRY: No. We paid him a thousand
14 dollars.

15 THE COURT: Oh, you did. Okay.

16 So if I were to ask you to be sworn in, would you just
17 say all this under oath?

18 DEBTOR JOSEPH PERRY: Yes.

19 DEBTOR ROBIN PERRY: Absolutely.

20 THE COURT: Could we swear in Mr. or Mrs. Perry,
21 whoever wants to talk.

22 ROBIN PERRY,
23 having been first duly sworn, was examined and testified as
24 follows:

25 EXAMINATION

1 BY THE COURT:

2 Q. And so you are Robin Perry?

3 A. That's correct.

4 Q. And you filed a bankruptcy case along with your husband,
5 Joseph?

6 A. That's correct.

7 Q. And Randy Risner represents you in that bankruptcy case?

8 A. That's correct.

9 Q. Before you filed the case, how much did you pay him?

10 A. One thousand dollars.

11 Q. And did that include two hundred and ninety-nine dollars
12 for the filing fee?

13 A. Yes, it did.

14 Q. So seven hundred one dollars for his work, and two hundred
15 ninety-nine for the filing fee?

16 A. That's correct.

17 Q. Okay. So if he filed a disclosure of compensation that
18 said you paid him nine hundred and seventy-five dollars, that
19 would be wrong?

20 A. To my knowledge, yes.

21 Q. And were you aware that he filed an application to pay the
22 filing fee in installments?

23 A. Yes, I am aware of that. He called us in his office
24 shortly before he got us a court date for our bankruptcy, and
25 proceeded to tell us that he did not have the money to file our

1 case.

2 Q. Okay. And it looks like one installment was paid, and the
3 balance of installments have not been paid.

4 THE COURT: The Court is going to issue an order to
5 show cause to Mr. Risner why he should not be sanctioned for,
6 first of all, stating that he received nine hundred and
7 seventy-five dollars when he actually received a thousand and,
8 second, for filing an application to pay the filing fee in
9 installments when he'd actually received all the money to pay
10 the filing fee from you.

11 BY THE COURT:

12 Q. Did you authorize him to file the application to pay the
13 fee in installments?

14 A. Yes, we did.

15 Q. Okay. Even though you'd paid it all to him ahead of time?

16 A. Yes.

17 Q. Okay. Alright.

18 And did he go to the meeting of creditors with you?

19 A. Yes, he did.

20 Q. Okay. And did he discuss the reaffirmation agreement with
21 you?

22 A. Briefly.

23 Q. Okay. Did he explain to you the consequences of the
24 reaffirmation agreement at all like I just did?

25 A. No. You were much more forthwith.

1 THE COURT: Okay. So let's get back to your
2 reaffirmation agreement now, which is why you're actually here.

3 This is your 2007 Camry. Who drives the Camry?

4 DEBTOR JOSEPH PERRY: I do.

5 THE COURT: You do, okay.

6 And do you have another car that you drive?

7 DEBTOR ROBIN PERRY: Yes, I'm using my mom's so
8 that --

9 THE COURT: And you're paying -- it looks like you're
10 paying six point three nine percent, you have about two years
11 left of payments, you owe about ten thousand dollars, and you
12 think it's worth about fourteen thousand dollars, so that's all
13 a plus.

14 The problem is that -- and Mr. Risner did sign the
15 agreement, but he says he thinks it's an undue hardship. And
16 based on your bankruptcy schedules, it looks like it is an
17 undue hardship. How are you going to make this -- these
18 payments work?

19 DEBTOR ROBIN PERRY: Well, we don't have any other way
20 to get to work.

21 THE COURT: Right. But you say you've got four
22 thousand six hundred and fifteen dollars of income and five
23 thousand three hundred twenty-four dollars of expenses, and so
24 that doesn't equal out at the end of the month.

25 DEBTOR ROBIN PERRY: All I know is that my husband is

1 working in Bakersfield, and we only have two cars. And I have
2 two children, and I have to work also. And I don't know how
3 else we're going to manage.

4 THE COURT: Right, I understand that. But if you have
5 forty-six hundred dollars a month in income and fifty-three
6 hundred dollars a month in debts, what are you going to stop
7 paying in order to make the payments on the Camry?

8 DEBTOR ROBIN PERRY: I don't know.

9 THE COURT: Are you current on the Camry right now?

10 DEBTOR ROBIN PERRY: Yes, we are.

11 THE COURT: So, I'm looking at your expenses here.
12 And you still have your house?

13 DEBTOR ROBIN PERRY: Yes.

14 THE COURT: And it looks like you've got Internet,
15 medical and dental expenses, three hundred and thirty-four
16 dollars a month. I'm just trying to see what you could give up
17 here. Oh, you've got nine hundred and twenty dollars a month
18 on college tuition and fees and job-related travel costs?

19 DEBTOR ROBIN PERRY: That's correct.

20 THE COURT: So you're paying -- how much of that is
21 college tuition?

22 DEBTOR ROBIN PERRY: We're not paying college
23 tuition. My daughter's tuition is covered. That is for my
24 husband's expenses traveling to and from Bakersfield.

25 THE COURT: I'm sorry, I'm confused.

1 DEBTOR ROBIN PERRY: I don't know why that says
2 college fees, unless he included, you know, our transportation,
3 getting our daughter to and from school.

4 THE COURT: Well, I'm just trying to see where the
5 give and take is here on your expenses. You've got three
6 hundred and thirty-four dollars a month in transportation, not
7 including car payments, I think, and then -- let's see, that
8 would be insurance, that would be charity.

9 You've also got seven hundred dollars a month in
10 recreation, clubs, entertainment, newspapers, and magazines.
11 That could be something that --

12 DEBTOR JOSEPH PERRY: That's -- that's an error.

13 THE COURT: That's an error.

14 DEBTOR ROBIN PERRY: That has to be an error.

15 THE COURT: Okay. And then you have -- okay.

16 So assuming that's an error, you think you can afford
17 to make these payments?

18 DEBTOR ROBIN PERRY: Yes.

19 DEBTOR JOSEPH PERRY: We have been --

20 DEBTOR ROBIN PERRY: We have been making the payments.

21 THE COURT: Okay. I will approve the agreement.

22 Alright?

23 DEBTOR JOSEPH PERRY: Thank you.

24 THE COURT: Okay. And you'll get notice of the order
25 to show cause to -- directed to Mr. Risner. If you can appear,

1 that would be great. If you can't appear, that's okay. You
2 won't be required to appear.

3 DEBTOR JOSEPH PERRY: He assured us that he would make
4 the payments so --

5 THE COURT: Well, he hasn't so -- he made one.

6 DEBTOR JOSEPH PERRY: Okay.

7 DEBTOR ROBIN PERRY: Thank you very much.

8 THE COURT: Thank you.

9 (The proceedings were concluded.)

10

11 I, LINDA A. GORMAN, Registered Merit Reporter and
12 C.S.R. License #12693, do hereby certify the foregoing
13 transcript as true and correct.

14

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DATED: March 11, 2011

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By:/s/Linda A. Gorman, RMR
Certified Shorthand Reporter #12693

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